

## **Remarks**

In response to the Office Action dated May 21, 2004, reconsideration is requested on the basis of the amended claims above.

### Drawings

Regarding the objection made in relation to the drawings under 37 CFR 1.84(p)(5), the attention of the Examiner is directed to page 22, lines 4-8, in which reference numeral 52 (Fig. 2) is referred to.

### Claim Objections

Claims 12, 16, 39 and 50 have been corrected in accordance with the Examiner's helpful suggestions. Claim 47 has been corrected by replacing the phrase "the a in dependence" with "a user in dependence", in conformity with claim 33.

### Claim Rejections – 35 USC § 112

In claim 6, the term metric has been replaced by "said measure of network performance" which finds antecedent basis in claim 1.

Claims 30, 46 and 47 have been corrected to refer to the "dynamic calculation of a measure of network performance" which finds antecedent basis in claim 1 and claim 34.

In claims 48 and 49 the word "the" has been deleted before "transmission characteristics" to overcome the rejection for lack of antecedent basis.

In claims 18 and 40 the term "about" has been removed, i.e. "the value of Y is from 92 to 97".

MPEP 2173.05(b) makes clear that the term "about" is not inherently objectionable. It can be allowable as a term which is "clear, but flexible". It is objectionable when there is "close prior art *and* there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term".

The first condition, that of close prior art, does not apply in relation to the claimed range.

The second condition does not apply either. The specification makes clear (due to the fact that claim 19 is dependent on claim 18) that claim 19 is more limited than claim 18.

Accordingly, the range "from about 93 to about 95" is not indefinite in this context since a limitation is laid down in claim 18 as to the definite outer limits of the range. The range recited in claim 19 is flexible, but is somewhat more limited than the "92 to 97" range of claim 18. The same arguments apply in respect of claim 41 (equivalent to claim 19), and to claims 20 and 42, respectively, which in turn are dependent on claims 19 and 41, respectively and thus more limited in scope.

Claim 53 has been amended to refer to "said standardised time".

#### Claim Rejections – 35 USC § 102

Schuster et al. (US 6,363,053) disclose a method for use in ensuring that network service providers conform service level agreements (SLAs). The method is effectively for providing a network management tool which generates reports and statistics for subsequent use in enforcing SLAs.

The method of Schuster et al is not performed as part of a "live" communications session such as during a call. The present invention is useful precisely because it operates while a call is in progress to provide the user with a dynamic indication (as specified in claim 1) of the quality of service.

Secondly, the method of Schuster et al is not performed in relation to an "endpoint" in the sense that this term is used in the present application. Again, the usefulness of the present invention is largely due to the fact that the QOS measurements relate to the transmission of test packets while a call is in progress involving a given user's device (say a telephone set or PC running a VoIP application), and the dynamic display of results at that device to that user.

Claim 1 now specifies that the endpoint is a telecommunications device which enables a user to participate in a telecommunications session, and that the test packets are transmitted during a session involving the device in question, e.g. during a call made from the handset, and

additionally, that the dynamic indication of network performance is provided at the device during the session.

This contrasts with the disclosure of Schuster which (a) does not involve an endpoint in the sense of a device for enabling a user to participate in a telecommunications session (such as a telephone, cellular phone, handset, video phone, or PC enabled with telephony or video software); (b) does not make measurements as part of a specific session (call) involving a given device; and (c) does not provide a user engaged in a session from a device with an indication, at the user's device, of the network characteristics as they relate to that particular session and device.

Similar amendments have been made in each independent claim. Furthermore a new independent claim 54 is presented which is equivalent to original claim 14 when written in independent form including all of the limitations of the base claim.

#### Claim Rejections – 35 USC § 103

For the sake of completeness, consideration has been given to the combinations of Schuster with Vaid et al. (US 6,502,131) and Brueckheimer et al. (US 2002/0087370).

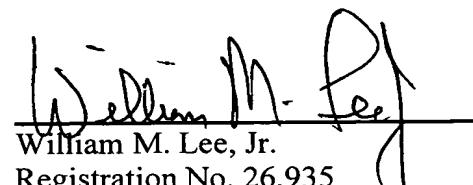
Vaid et al. is cited in relation to the disclosure of a method and apparatus in which alarms are triggered when QOS drops below a threshold. However, like Schuster et al, Vaid et al suffers from the shortcoming that it describes a network management tool, and contains no teaching or suggestion of points (a) to (c) mentioned above. As the Examiner acknowledges, the motivation for the combination of Schuster and Vaid is to provide an aural alarm to the network manager. The point of the present invention is to provide an ongoing dynamic indication to a caller at his or her device (e.g. to show QOS "strength" in the same way that cellular phones show "signal strength").

Brueckheimer et al. is cited only in relation to claims 12, 13 and 37 in relation to its disclosure of an Equipment Impairment factor as part of an E-model. Clearly this does not bring the skilled person any closer to the invention of claim 1 than Schuster on its own.

It is hoped that the Examiner will recognize the allowability of the claims taking the above points into consideration, and now allow the application. Favorable reconsideration is therefore urged.

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Respectfully submitted,



William M. Lee, Jr.  
Registration No. 26,935  
Barnes & Thornburg LLP  
P.O. Box 2786  
Chicago, Illinois 60690-2786  
(312) 214-4800  
(312) 759-5646 (fax)

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